Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 764

RIN 0560-AI17

Microloan Operating Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is modifying Operating Loan (OL) application, eligibility, and security requirements for Microloans (ML) to better serve the unique operating needs of small family farm operations. The intended effect of this rule is to make the OL Program more widely available and attractive to small operators through reduced application requirements, more timely application processing, and added flexibility in meeting the managerial ability eligibility requirement. FSA is also removing provisions for the low documentation (Lo-Doc) application process for OLs from the existing direct loan regulations.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690-0756. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION

Background

FSA has a long history of providing agricultural credit to the Nation's farmers and ranchers through its OL Program. The Consolidated Farm and Rural Development Act of 1972 (Pub. L. 92-419, CONACT), as amended, authorizes FSA's OL Program. FSA's OL Program is designed to finance the farm operating needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient applicable education, on-the-job training, or farming experience; have an acceptable credit history; and have adequate collateral for the proposed loan. (See 7 CFR 764.101 and 764.252 for a full explanation of OL eligibility requirements.) OL funds may be used for such things as annual or term operating purposes to refinance certain debts; pay normal farm operating and family living expenses; purchase livestock, equipment, and other materials essential to a farm operation; and may also be used for some minor improvements to farm real estate, such as wells and essential repairs to buildings. (See 7 CFR 764.251 for a complete list of OL funds uses.) Throughout this rule, any reference to "farm" or "farmer" also includes "ranch" or "rancher," respectively; in this document, the word "operator" refers to farmers who operate a farm.

In on-going efforts to improve the OL Program, FSA evaluated the unique needs of small farm operations and identified unintended barriers to applying for OLs. As a result, FSA is simplifying the application process and adding flexibility for meeting both loan eligibility and security requirements to encourage their participation. FSA published the proposed rule on May 25, 2012 (77 FR 31220 - 31226). The proposed rule included

provisions for streamlining and abbreviating the application process, modifying security provisions, and providing additional flexibility in meeting the experience eligibility requirement. Additionally, FSA proposed removing the Lo-Doc OL Program provisions from the CFR. As discussed below, this final rule makes a few changes from the proposed rule in response to comments.

The ML application process, or the ML process, is within the existing OL Program framework, and uses existing OL appropriations to focus on the financing needs of small farm operations. These small farms, including non-traditional farm operations, currently have limited financing options available.

ML has been designed to appeal to small family farm operations. The ML application process simplifies the information required to apply by reducing the level of documentation required to more appropriately align with the less complex structure and needs of small operations. Additionally, the eligibility requirement for managerial ability and the loan security requirements for the ML process have been modified from the OL requirements to be more appropriate for small family farms.

Summary of Comment and Reponses

In response to the proposed rule, FSA received 48 comments. Comments were from national and local organizations primarily with agricultural, financial, and socially disadvantaged group affiliations; the general public; and FSA employees. The issues in the comments and the FSA responses, including a discussion of any changes to the regulation are discussed below.

The majority of the comments received were positive and supportive of the proposed ML process and commended FSA for considering the needs of small farms and niche-type operations while designing the new application process. Many of the comments welcomed the proposed changes without reservation. Some comments included suggestions for fine-tuning the proposed ML process. Some opposing comments stated concerns with inexperienced borrowers, a lessened standard of loan underwriting, and potential losses for the government.

FSA is incorporating some changes to the regulation as discussed in this final rule. Some changes have been made to the farm assessment, security, eligibility, and farm operating plan requirements to accommodate the streamlined process for MLs. The changes in 7 CFR part 764, "Direct Loan Making," add the loan application requirements for ML; alternatives for meeting the managerial ability eligibility requirement for ML; operating loan uses for ML; security requirements for ML; and several other minor amendments.

Comment: Include the work experience of migrant workers in the requirement for managerial experience.

Response: For FSA loans generally and for microloans, as specified in 7 CFR 764.101(i)(3), an applicant with experience as a migrant worker may meet the managerial requirement through their farm experience depending on the type of management responsibilities the migrant worker performed. Internal guidance was added earlier this year to incorporate this type of experience into FSA's handbook at paragraph 69(A) of 3-FLP. Additional handbook guidance will be added to further explain how this type of

experience can be used to meet the requirements specified in the ML regulations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should broaden the agriculture-related organizations beyond youth programs, such as 4–H Club or Future Farmers of America (FFA), to include groups such as farm incubator programs and community based organizations.

Response: FSA will not limit the experience with agriculture-related organizations to youth programs. FSA agrees and will clarify that there are acceptable organizations with agricultural emphasis that can provide similar benefits to participants. The applicant that demonstrates day-to-day management experience in an agriculture related field. Therefore, FSA is revising § 764.101(i)(4)(i) to include other acceptable agricultural organizations.

Comment: The proposed change to the management experience should not be implemented. An applicant gaining experience on future intent is problematic. There should be at least 1 year of farm experience prior to participating in the proposed apprenticeship. In addition, there should be some type of quality control for the mentors participating in the apprenticeship program.

Response: FSA agrees that an applicant should have some farm experience or small business experience to be determined eligible using proposed participation in the self-directed apprenticeship. FSA's intent was to create a farm management opportunity for applicants who are not able to meet the management ability eligibility requirement through traditional education, on the job training (as a farm laborer with farm management responsibilities), or managerial farm experience. FSA understands that there are applicants who want to farm, but who may not have had the traditional farm

experience opportunities available to someone raised on a farm or in a farm or rural community where agriculture-affiliated organizations are within reach. Some applicants, due to a variety of circumstances, may have had only farm labor positions available to them. A self-directed apprenticeship was proposed for ML applicants to allow applicants an alternative means to gain farm management experience for one production cycle.

FSA has considered the suggestions to improve the apprenticeship option. FSA still requires that there be some farm experience. FSA will also consider small business experience of an applicant along with the self-guided apprenticeship as a means to meet the management ability eligibility requirement, if the applicant is unable to meet this requirement through the other options. This will assist applicants who have only farm labor experience by providing them the opportunity to gain farm management experience while working with a mentor during the first production and marketing cycle. FSA will make the relevant changes to the apprenticeship program. FSA will monitor the results of the apprenticeship option in the coming years to determine if it adequately meets the needs of the applicants we expect to help. Therefore, FSA is revising § 764.101(i)(4)(ii) to adjust the proposed alternatives to require sufficient prior experience working on a farm or small business management experience combined with participation in a self-directed apprenticeship.

Comment: Require the mentor to sign the loan application to prevent fraud and abuse of program.

Response: FSA will require that the mentor's full name and description of operation be provided on the application, but disagrees that the mentor should have to sign the application form. FSA believes requiring a signature on the application would

make mentors wary of working with FSA applicants and borrowers. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: There should be qualifying criteria for mentors so that their suitability can be evaluated. Mentors should demonstrate appropriate technical and other capabilities to provide guidance to applicants, acknowledge the existence of a proposed mentor relationship, and provide documentation of their farm profitability.

Response: FSA has made adjustments to the regulatory text as proposed for 7 CFR 764.101(i)(4)(ii) to improve the self-directed apprenticeship option to assist applicants in meeting the management ability eligibility requirement. At this time, mentors will not be evaluated as part of the application process. An evaluation would cause the ML application to become cumbersome, and increase the process and burden on the applicant and mentor. As stated previously, FSA believes that this would cause mentors to be reluctant to work with FSA applicants and borrowers. Part of the intent of ML is to keep the process proportional to the loan amount, and to the small operations expected to frequently use ML funds. FSA will evaluate the effectiveness of the apprenticeship program in the coming years to determine if this tool is useful in helping applicants who cannot meet the management ability eligibility requirement in other ways. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Do not limit debt verification to the credit bureau reports; most of the farm creditors do not report to the credit bureaus.

Response: FSA understands that many farm creditors and local suppliers do not report to the credit bureaus. FSA considers the self-certification of debt on the application to be an acceptable risk that will contribute to streamlining efforts. Since

applicants will still need to demonstrate credit-worthiness as specified in 7 CFR 764.101(d), among other OL eligibility criteria, any risks in this area are expected to be low. If deemed necessary by the loan official, additional information may be requested from the applicant; however, this should be in exceptional cases in order to keep ML a truly streamlined process. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The non-itemized cash flow will lower the level of business analysis and supportive documentation that would be required. FSA should require a minimum of 3 years of tax returns plus other information completed in greater detail. The non-itemized cash flow with less experienced operators is a set up for failure in any business venture.

Response: FSA disagrees and will not be requiring an itemized cash flow or increased documentation for ML applicants, as the intent of ML is to keep the process proportional to the smaller loan amounts and to the small, simpler operations expected to seek this financing. For applicants new to FSA who may produce non-traditional crops or with production practices where yield per acre may be less important, other factors, such as the production capacity, the consistency of income and expenses, and the timely harvest and selling of produce, may be more appropriate measurements to use in establishing actual productivity and projected plans. In addition, FSA predicts that many ML borrowers will be existing OL borrowers that already borrow at the $35,000 threshold and below. In these cases, FSA will have information on file for many of these applicants through the normal course of business in past years (year end analysis (YEA),

Farm Assessments, etc.). Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: New operations applying for ML should not be required to have yields or yield history.

Response: The proposed rule already allowed for circumstances where yield history or reporting is impractical, not relevant to the proposal submitted, or is not available. Some applicants meeting the managerial eligibility requirements will not have operated a farm in the previous year, and therefore will not be required to have yield history. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Any applicant having caused FSA a loss should be considered ineligible for ML. The documentation needed for the application would be beyond the intent for the simplified ML process; they should have to provide all of the documentation for an OL. The applicant would have the option to apply for OL through the regular process as specified in 7 CFR 764.252(c).

Response: MLs are direct program loans, and the general eligibility requirements for direct loans already state that an applicant who caused the Agency a loss by receiving debt forgiveness (defined in 7 CFR 761.2) may be ineligible (7 CFR 764.101(d)(2)).

Comment: MLs should not be secured by collateral worth only 100 percent of the loan amount; it should still be able to be secured with up to 150 percent, when available. The proposed change differs from the current regulation in § 764.104(c), which requires collateral worth up to 150 percent of the loan amount, if available, to secure the loan. Why decrease security requirements for MLs when these loans are riskier than regular OL loans or loans made to established producers? Additionally, the crops financed for

direct sales involve added risk to loan security; it would be impractical for FSA to enforce a Uniform Commercial Code (UCC) filing on these commodities and, therefore, FSA would have no control over the produce sales income.

Response: FSA's intent for ML is to provide flexibility for financing and to prevent possible barriers to meeting loan security requirements: specifically, requiring additional security to finance unfamiliar crops and production. As a clarification, for FSA's existing OL Program, all agricultural commodities, whether salad greens or corn, are considered eligible production for a family farm and are regularly financed by FSA with UCC filings. So long as the agricultural commodities are determined to have a security value of 100 percent of the amount loaned for annual operating and family living expenses these commodities can be used to secure the loan. FSA agrees that for MLs security of 100 percent should always be required, but the requirement for additional security up to 150 percent, when available, should be limited to MLs for annual operating purposes. FSA also believes that additional security from 100 percent to 150 percent should be limited to farm assets, and is not to include the personal residence. Therefore, FSA is revising § 764.255(c)(1), (2), (3), and (4) to limit collateral to farm property having a security value of at least 100 percent for MLs and up to 150 percent, if available, for MLs made for annual operating purposes. This adjusts the security requirements for crops and equipment separately to meet a balance between adequate collateral margin, the type of security, and security requirements that take into consideration the assets and collateral of the non-traditional, and new farm operations that FSA expects will be seeking ML funding.

Comment: The costs to legally obtain the collateral in cases where loans fail would be onerous and exceed the value FSA would recover.

Response: FSA agrees that in some cases, the costs to obtain the collateral could be onerous and exceed the value FSA would recover. FSA is required to service its loans, but can make the decision on how best to service delinquent loans on a case-by-case basis. This flexibility can limit the amount of loss to FSA. Treasury offsets are also applied to delinquent borrower accounts to recover amounts due. So, even when the loan balance exceeds the liquidated security FSA anticipates it will recover additional amounts through offsets. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Sound underwriting standards would require a second or junior mortgage placed on the property to cover the first mortgage.

Response: FSA is making some adjustments to the security requirements for annual MLs, requiring chattel collateral up to 150 percent when available, excluding personal residences. Therefore, FSA is revising § 764.255(c)(1), (2), and (4) to limit collateral to farm property having security value of at least 100 percent, and up to 150 percent , if available, for MLs made for annual operating purposes.

Comment: Allow a cosigner on the security requirement.

Response: FSA presently accepts a pledge of security from a third party or a cosigner under general security requirements. This option would also apply to MLs. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Do not remove the Lo-Doc OL application process; Lo-Docs still serve a purpose, particularly those that are above the ML maximum of $35,000.

Response: To continue providing streamlined financing for annual OL needs up to $300,000, FSA is implementing internal processing changes, which do not require changes to the regulations, for an OL application process for returning customers with no changes in their operation since their original loan application. This new process for a subsequent OL, along with ML, is expected to improve the overall application process for all levels of OLs; the Lo-Doc would then become obsolete once these proposed changes are implemented. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The $35,000 maximum loan limit for ML should be a different amount. It should be $25,000 or lower to limit risk. FSA should assess any losses after a period of years, and then consider increasing the maximum. Alternately, the maximum amount should be greater than $35,000, with a limit up to $50,000.

Response: ML will initially have a $35,000 maximum amount. FSA's preliminary analysis predicts this amount will be sufficient to provide financing needs to a substantial group of operators, but still low enough to be a manageable risk. FSA will review the success of the program and will reevaluate the loan amounts periodically, and if any change is needed, it will be made through rulemaking. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML should be limited to individuals and husband and wife joint ventures only since this program is intended for more simplistic operations. The additional documentation required for entities does not lend itself to this type of simplified application.

Response: FSA disagrees. This suggestion would cause some entities to be excluded from the ML process that might otherwise benefit from the changes intended for small operations. In addition, one of the requirements of the Regulatory Flexibility Act (5 U.S.C. 603) is to consider alternatives to minimize any significant economic impact of the rule on small entities. Arbitrarily limiting applicants to certain entity compositions could be considered disparate treatment. Furthermore, initial analysis and applicant estimates for the program show that only a small number of ML applicants would be entity applicants. The ML process is intended to tie the dollar amount of risk involved to the level of paperwork and documentation needed, rather than the type of organization. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML should be limited to 4 of the 11 possible uses under the OL Program to avoid bringing more complex issues that would not fit a simplified loan application.

Response: FSA disagrees. The ML process is intended to tie the dollar amount and risk involved to the level of paperwork and documentation needed, rather than the use of the loan money. It would be disparate treatment, and unsound business practice, to tie paperwork requirements to the uses of loan funds. Limiting uses of funds to only a few of the normal OL loan uses would punish those who request small loans, and it would be potentially confusing. MLs were designed to be less complicated. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: There should be a limitation on use of balloon payments and terms to those that can be repaid within 7 years. The documentation needed to justify the longer

terms requires additional paperwork by both the applicant and Farm Loan Programs (FLP) staff.

Response: Loan terms for MLs will be the same as FSA's regular OL Program, which does limit term loans to a 7-year term. All MLs will be serviced the same as regular OLs. FSA also realizes that the profitability of an operation is not directly tied to the amount of operating funds it borrows and therefore believes that many smaller operations whose loan needs can be accommodated through the new ML process can be quite successful and business savvy enough to easily handle any balloon payment. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should not require an ML applicant to submit additional information even if specifically needed to make a determination on the loan application. Asking for additional information may sound favorable to FSA; but it may make the process less palatable to the applicant after submitting what is believed to be a complete application.

Response: FSA will not be making this change, as there are situations, such as requesting a divorce decree document in order to determine whose signature is needed to secure a loan, in which additional information will be necessary. FSA believes that there is a responsibility to undertake adequate due diligence to protect loan funds. The intent of the ML process is that requiring additional information will be the exception, in keeping with a truly streamlined process for applicants. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should partner with agricultural groups to provide training and mentoring for ML applicants to include beginning farmers, sustainable agriculture, and specialty non-traditional operations.

Response: FSA does partner with agricultural groups to provide training and mentoring, and will do so for ML applicants, and all borrower training requirements will apply as with all other FSA loans. FSA is committed to working through outreach and marketing efforts in local Service Centers and State offices to continue to seek additional opportunities for applicants and borrowers to receive appropriate, accessible training and continuing education as they start and build their farm operations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Outreach for MLs is important to Socially Disadvantaged Applicants (SDA), applicants with limited English proficiency, and various ethnic minority communities. Will MLs target funds for Beginning Farmer (BF) and SDA applicants?

Response: FSA has a strong commitment to Farm Loan Programs outreach and marketing at the Service Center and State Office levels, and anticipates strong demand for ML from SDAs. MLs are part of the OL Program and will be included in the outreach. Loan officials can locate interpreters on an as-needed basis if there is a language barrier with applicants. Loan applications and funding for SDA and BF customers are targeted, tracked, and monitored to ensure that these producers are reached within the communities FSA serves. ML will have the same BF and SDA loan funding goals as does the existing OL Program. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: For ML to effectively assist the non-traditional farmers with this streamlined process, staff will need to be trained at the local and State levels.

Response: Local offices will be provided training when the program is introduced, and further training will be provided on a periodic basis. Training on the new process, and the expected types of operations seeking MLs will be provided for a successful roll-out and implementation of this program. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Prioritize data and data collection to build information on nontraditional types of local markets.

Response: FSA State offices compile the prices and yields of agricultural commodities, and make them available to the Service Center staff for loan underwriting and projecting purposes. For States and regions that currently have more exposure to more non-traditional and direct sales types of operations, additional data has been added on a year by year basis depending on the consistency and availability of market and yield data. Additional guidance on organic and less traditional crops is also being provided and will be in handbook amendments. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should build in metrics to evaluate, monitor, track, and measure MLs separate from OLs.

Response: FSA is implementing the necessary changes in our system, so that the MLs can be isolated and evaluated. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The ML application should be made available online with an improved application interface.

Response: Applications and forms are available online for printing; some forms are fillable and can be submitted electronically. FSA agrees that an online application process would be an efficient alternative to the present OL application process, but a regulatory change is not necessary to accomplish this. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML would be enhanced if payments could begin 3 years after establishing crops with longer production cycles versus requiring installments due prior to crop maturity.

Response: The suggested change is not necessary. In some circumstances FSA already allows OL (which include MLs) principal and interest payments to be adjusted, and deferred until the crop establishes and produces, including, for example, woody plants, vineyard plantings, asparagus, and cranberries. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Will ML be subject to the direct OL term limits?

Response: ML is a part of the direct OL Program and will be subject to the OL term limits set by law (see 7 U.S.C. 1941). Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Will the Limited Resource (LR) rates be used for ML?

Response: ML is a part of the direct OL Program, and LR rates can be used as appropriate as specified in 7 CFR 764.254. In this current low interest rate environment, the LR rate of 5 percent is above the regular OL rate. When the regular OL interest rate

is above 5 percent, it will be appropriate to consider the impact of LR rates on the borrower's cash flow. Therefore, no change is necessary.

Comment: Allow borrowers to make payments when they sell their products.

Response: A change is not necessary because existing regulations already allow FSA borrowers to pay on their loans if receiving sales income throughout the year and prior to the annual due date. There are no prepayment penalties for any FSA direct loans. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: What is the projected annual number of new borrowers, and existing borrowers expected to receive ML funds?

Response: FSA's cost benefit analysis looked at the segment of existing direct OL customers borrowing $35,000 or less and estimates that with ML maximum rate of $35,000 there would be, at most, 3,340 existing borrowers in this group. The analysis provides the best possible information for borrower projections. No regulatory change is necessary.

Comment: FSA should wait for the next Farm Bill. What is FSA's authority for ML regulation?

Response: ML is a subset of OL. Therefore, all the requirements and provisions in7 U.S.C. 1941 for OL apply to MLs. FSA believes that many of these changes provided through ML, which were overwhelmingly supported by the commenters, will be welcomed by FSA customers. There has been much anticipation for an OL process that is more proportional to the loan amount, and the smaller operations have been seeking this financing. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: This program, like other FLP loans, only applies to people with bad credit, what about people with good credit?

Response: Applicants must show creditworthiness to be eligible for a direct loan. While it is true that an applicant must be unable to obtain credit elsewhere, circumstances surrounding an applicant's inability to obtain credit may not be related to bad credit issues. Some lenders will not lend for certain agricultural loan purposes, for loan amounts or equity amounts below a minimum threshold, or for any agricultural purpose. Weather-related or economic-related conditions beyond the applicant's control may also prove to be a temporary setback for some operations. Statistically, small operations are more susceptible to these situations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Technical assistance or guidance from FSA to ML applicants should be required. What resources are available to provide this assistance?

Response: FSA officials will provide technical assistance to direct loan applicants, if needed, to complete FSA forms and gather information necessary for a complete application. This assistance to applicants includes explaining the application process; identifying sources of information, informing applicants of other technical assistance providers who may be of assistance at minimal or no charge (such as Cooperative Extension Service, USDA outreach grants, Service Corp of Retired Executives), and advising applicants of alternatives to help overcome barriers to being determined eligible for FSA assistance. Other resources are available on a regional basis and FSA State Offices and local Service Centers often provide additional information not

available on a national basis. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: How will the definition of "family farm" relate to small agricultural production; for example, small family farms versus hobby farms? Will there be restrictions on farm size or gross income minimums?

Response: FSA is not changing the "family farm" definition with this rule; any definition is unlikely to anticipate and address every possible production financing request. Requests to finance unusual farm production will continue to be handled on a case-by-case basis. FSA will develop additional handbook guidance, and provide initial and ongoing training as needed to field staff that will highlight and review ML financing of small farm operations. The current "family farm" definition in 7 CFR 764.101(k) does not specify minimum farm size restrictions, or minimum gross income, and FSA does not believe that it is necessary to be more specific for MLs. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: When will ML be implemented?

Response: This final rule implements the changes required to start ML.

Other comments and recommended changes were out of scope or related to statutory requirements of the loan programs other than MLs. Some of the comments falling under the category of statutory requirements or otherwise out of scope for the proposed ML concerned guaranteed ML lending, intermediary (or partnering) lending, elimination of OL term limits; and comments general to FLP and not specific to ML.

Effective Date

According to 5 U.S.C. 553(d), a rule is to be published in the Federal Register 30 days prior to its effective date, unless, among other things, there is good cause found by the agency. (See 5 U.S.C. 553(d)(3).) FSA finds that good cause exists to implement this final rule immediately. At this time of year, a 30-day delay between publication and effective date of the final rule will adversely impact the very applicants it is intended to benefit. For ML to have the greatest impact, it is essential for it to be implemented as early in 2013 as possible. Growers need credit as soon as possible to pay land rent and crop expenses so they can plant their crops on time for optimum production and marketing. Many suppliers offer early season discounts for cash purchases of planting inputs; a 3-5 percent discount on seed, fertilizer, and chemicals will go straight to a grower's bottom line, a vital addition to profit margin. Early availability of MLs will allow FSA to provide credit to these small producers on a timely basis, enhancing their prospects for success. This final rule does not put any additional burdens on the FSA borrower. Instead, the rule makes the loan application less burdensome for applicants for MLs than for applicants for a standard OL. The proposed rule was straightforward and very well received by the public. The rule imposes no complex policies or program requirements that the public would need 30 days to analyze and understand prior to implementation.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all

costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

The term small entities include small businesses, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of this rule on small entities, a small business is based on the categories in the Small Business Administration's Table of Small Business Size Standards by North American Industry

Classification System (NAICS) Category (13 CFR 121.201). All of the entities that would request a Microloan would be small businesses that produce crops and livestock in subsectors 111 and 112 listed in 13 CFR 121.201. These categories cover all primary agricultural production. Under the SBA Small Business Size Standard for these two NAICS subsector categories, the majority of businesses are considered small when they receive less than $750,000 in annual receipts; the threshold is higher for two subcategories of animal production. (See 13 CFR 121.201, subsectors 112112 and 112310.) This standard does not exclude any of the potential farm loan borrowers who will make use of the modifications to the OL Program. Nevertheless, even though the applicants under ML are considered small entities, there would not be a substantial number affected by the rule.

Overall, this rule creates a new application process and greater options for eligibility and security for small loans within the existing OL Program, so, theoretically, some of the loans could be made under the existing program. Therefore, small entities in two credit segments have to be considered for this analysis. One segment is the number of existing borrowers who might take advantage of the modifications in eligibility for future loans. The other segment is the number of new borrowers who might never have applied for an FSA operating loan without the modifications. The number of existing borrowers who might make use of the application, eligibility, and security modifications for future loans can be estimated using fiscal year 2011 direct operating loan data. Given that the maximum borrowing limit is $35,000 as set forth in the rule, it is estimated there would be at most 3,340 borrowers with $102.7 million in loans in this segment. However, since this estimate consists of existing borrowers with the same credit needs,

this segment will have no additional economic impact. Only the demand by additional borrowers will have an incremental economic impact. This demand is more difficult to estimate. Preliminary estimates assume the new borrowers will be younger, below the age of 35, and have relatively low annual sales, less than $10,000 annually. Using data from the 2007 Census of Agriculture, this segment of producers consists of about 14,434 primary operators. Historically, FSA direct operating loans have captured only 2 percent of the agricultural credit market; so fewer than 300 borrowers will probably be added. Therefore, about 4,000 entities could be affected by this rule with an economic impact of only about $10.5 million (300 new borrowers times $35,000 in loans per borrower).

Furthermore, the minimal regulatory requirements will affect large and small businesses equally as part of the loan making process, since MLs are distinguished based on the size of the loan, not the size of the operation. ML applicants will have a lower paperwork burden that will be commensurate with the smaller loan amount, due to a reduction in documentation required for these loans. Therefore, in accordance with the Regulatory Flexibility Act, FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited number of entities, the economic effects from any additional lending are unlikely to have a substantial impact on entities of any size.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR

parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that simplifying the application process and adding flexibility for both meeting loan eligibility and security requirements to encourage small farm operation participation in its OL Program explained in this rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental impact statement on this rule.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." The provisions of this rule will not have preemptive effect with respect

to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule will not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to USDA's knowledge, preempt Tribal law. FSA held a series of tribal consultation sessions early in the rule making process. Representatives from all federally recognized tribes were invited to participate.

During the Tribal consultation, sessions were held to discuss ML, and FLP staff responded to the several comments and questions. The following summarizes the questions and responses discussed during Tribal consultation.

Comment: Will ML be targeting a certain group?

Response: MLs are designed to better serve small family farm operations. In addition, MLs may provide a bridge between Youth Loans and the traditional OL Program, and between the needs of smaller operations as they grow into larger farm operations.

Comment: What is the purpose of ML?

Response: ML will require less information to provide an application process more proportional to smaller loan amounts and operations in the growing segment of family farms engaged in organic farming and direct sales farming practices. Additionally, ML will provide financing at reasonable rates and terms, as some smaller operations often rely on credit cards, and dealer financing to finance their operations because they believe that paperwork requirements are often not worth the benefits.

Comment: Will financing operations raising rice in lakes owned by the Tribes be eligible for ML and other FSA loans?

Response: Operations using lakes managed by the Tribe can be eligible for FSA loans, including ML. FLP also welcomes the opportunity for future conversations to consider regulations that would permit financing operations that raise fish in bodies of water not fully controlled by the Tribe.

Comment: When will ML be implemented?

Response: FLP explained the steps of the rulemaking process, but could not provide an exact date for implementation. This final rule implements the changes required to start ML.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), FSA described the new information collection activities in the request for public comment in the proposed rule. Comments related to the Paperwork Reduction Act are discussed above and are in the supporting document that OMB reviewed. No change to the information collection was required based on the comments. After the final rule is published, the new information collection request will be merged with FSA existing information collection request approved under OMB control number 0560-0237.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.

For reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Amend § 761.2 as follows:

a. In paragraph (a), remove the abbreviation "Lo-Doc" and add an abbreviation, in alphabetical order, for "ML Microloan";

b. In paragraph (b), add definitions, in alphabetical order, for "Apprentice" and "Microloan"; and

c. In paragraph (b), remove the definition of "Low-Documentation Operating loan."

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

ML Microloan.

* * * * *

(b) * * *

Apprentice means an individual who receives applied guidance and input from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed.

* * * * *

Microloan is a type of OL of $35,000 or less made under reduced application, eligibility, and security requirements.

* * * * *

3. Amend § 761.103 as follows:

a. Revise paragraph (b), introductory text;

b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f); and

c. Add paragraph (c).

The revision and addition read as follows:

§ 761.103 Farm assessment.

* * * * *

(b) Except for ML, the initial assessment must evaluate, at a minimum, the:

* * * * *

(c) For ML, the Agency will complete a narrative that will evaluate, at a minimum, the:

(1) Type of farming operation and adequacy of resources;

(2) Amount of assistance necessary to cover expenses to carry out the proposed farm operating plan, including building an adequate equity base;

(3) The goals of the operation;

(4) The financial viability of the entire operation, including a marketing plan, and available production history, as applicable;

(5) Supervisory plan; and

(6) Training plan.

* * * * *

4. Amend § 761.104 as follows:

a. Redesignate paragraphs (e) and (f) as (f) and (g),

b. Add paragraph (e), and

c. In newly redesignated paragraph (f), remove the cross reference "paragraph (f)" and add in its place the cross reference "paragraph (g)".

The addition reads as follows:

§ 761.104 Developing the farm operating plan.

* * * * *

(e) For MLs, when projected yields and unit prices cannot be determined as specified in paragraphs (c) and (d) of this section because the data is not available or practicable, other documentation from other reliable sources may be used to assist in developing the applicant's farm operating plan.

* * * * *

PART 764 – DIRECT LOAN MAKING

5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

6. Amend § 764.1(b)(2) by adding the words "ML and" immediately following the word "including".

7. Revise § 764.51(c) to read as follows:

§ 764.51 Loan application.

* * * * *

(c) For an ML request, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay annual or term operating expenses, and

(ii) $35,000 or less and the applicant's total outstanding Agency OL debt at the time of loan closing will be $35,000 or less,

(2) The applicant must submit the following:

(i) Items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section;

(ii) Financial and production records for the most recent production cycle, if available, and practicable to project the cash flow of the operating cycle, and

(iv) Verification of all non-farm income relied upon for repayment; and

(3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.

* * * * *

8. Amend § 764.101 as follows:

a. In paragraph (i)(3) at the end of the first sentence add the text "or for MLs the applicant may have obtained and successfully repaid one FSA Youth-OL"; and

b. Add paragraph (i)(4).

The addition reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) Alternatives for ML. ML applicants also may demonstrate managerial ability by one of the following:

(i) Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4-H Club, FFA, beginning farmer and rancher development programs, or Community Based Organizations, that demonstrates experience in a related agricultural enterprise; or

(ii) A written description of a self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's specific operation. The individual providing the guidance must be knowledgeable in production, management, and marketing practices that are pertinent to the applicant's operation, and agree to form a developmental partnership with the applicant to share knowledge, skills, information,

and perspective of agriculture to foster the applicant's development of technical skills and management ability.

§ 764.103 [Amended]

9. Amend § 764.103 as follows:

a. In paragraph (c) remove the words "downpayment loans" and add the words "downpayment loans, MLs made for purposes other than annual operating," in their place.

b. In paragraph (e), last sentence, remove the words "conservation loans" and add the words "CL, ML" in their place.

10. Amend § 764.251 as follows:

a. Revise paragraph (a), to add the words "and ML" immediately after "OL" in the introductory text; andb. Remove paragraph (b).

11. Amend § 764.255 as follows:

a. Revise paragraph (b), introductory text; and

b. Add paragraph (c).

The revision and addition read as follows:

§ 764.255 Security Requirements.

* * * * *

(b) Except for MLs, by a:

* * *

(c) For MLs:

(1) For annual operating purposes, loans must be secured by a first lien on farm property or products having a security value of at least 100 percent of the loan amount, and up to 150 percent, when available.

(2) For loans made for purposes other than annual operating purposes, loans must be secured by a first lien on farm property or products purchased with loan funds and having a security value of at least 100 percent of the loan amount.

(3) A lien on real estate is not required unless the value of the farm products, farm property, and other assets available to secure the loan is not at least equal to 100 percent of the loan amount.

(4) Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, FSA will not require a lien on a personal residence.

Signed on December 21, 2012.

Juan M. Garcia,
Administrator,
Farm Service Agency.

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